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WESTERN DISTRICT OF LOUISIANA
MONROE LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

YOLANDA, ANDRE AND ANDREA WHITE on * **CIVIL ACTION NO. 05-0191**
behalf of deceased ANDRE WHITE SR., *

VERSUS

* **JUDGE JAMES**

LOVE'S TRAVEL STOP AND COUNTRY
STORES, d/b/a ARBY'S,

* **MAGISTRATE JUDGE HAYES**

*

*

J U D G M E N T

The Report and Recommendation of the Magistrate Judge having been considered, no objections thereto having been filed, and finding that same is supported by the law and the record in this matter,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the motion to dismiss filed by Defendant in this matter (Document No. 12) be **GRANTED in Part and DENIED in Part as follows:**

(1) Any claims brought by Andre White, Jr. and Andrea White in their own right are hereby dismissed WITHOUT prejudice for lack of legal capacity to sue, and the plaintiff is hereby granted 30 days from the date of this judgment to amend to allege claims on behalf of the minors in a representative capacity;

(2) Plaintiffs' claims under the Fourteenth Amendment of the United States Constitution are hereby dismissed with prejudice for failure to state a claim in that the complaint fails to allege state action and there is no basis to make such an allegation;

(3) Plaintiffs' claim for intentional infliction of emotional distress is hereby dismissed with prejudice as untimely; and

(4) Defendant's motion is DENIED as to Plaintiffs' survival action.

THUS DONE AND SIGNED this 26 day of August, 2005, in

Monroe, Louisiana.

A handwritten signature in cursive script, appearing to read "Robert G. James", written over a horizontal line.

ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION